



Initial assessment year under Section 80B(11A) is the assessment year in which the taxpayer commenced its business and not the assessment year when the said section has been amended

Background

Recently, the Gujarat High Court in the case of Anand Food and Dairy Products (the taxpayer) held that the taxpayer began its business of processing, preservation and packaging of vegetables and fruits from June 2001 therefore, the initial assessment year (AY) under Section 80B(11A) of the Income-tax Act, 1961 (the Act) would be AY 2002-03. Though, the taxpayer became entitled to the benefit of deduction under Section 80B(11A) of the Act with effect from 1 April 2005, after the amendment in the said sub-section (11A). It would not change the 'initial AY', which has been clearly defined under Section 80B(14)(c)(iv) of the Act to mean the AY relevant to the year in which the taxpayer commenced its business. Since five years had already elapsed from the initial AY, the taxpayer was entitled to the deduction of only 25 per cent of the profits and gains from its business in the relevant AY.

Facts of the case

- The taxpayer is engaged in the business of processing, preservation and packaging of vegetables and fruits.
- In relation to the assessment years (AY) 2007-08, 2008-09 and 2009-2010, the taxpayer claimed deduction under Section 80B(11A) of the Act at 100 per cent of the profits and gains of such business. However, the Assessing Officer (AO) held that the taxpayer was entitled to the deduction at the rate of 25 per cent under Section 80B(11A) of the Act.

- According to the AO, the taxpayer had commenced its business with effect from June 2001. Accordingly, the initial AY was 2002-03 and, beginning from this year, five years would end by 2006-07. The taxpayer is entitled to 100 per cent deduction of the profit from such business for five years, beginning with the initial AY and, therefore, is entitled to the deduction of 25 per cent of the profit for all the three years under appeal.
- The Tribunal took note of the fact that the expression 'initial assessment year' has already been defined in Section 80B(14)(c) of the Act. As per such definition, the initial AY for an undertaking engaged in the business of processing, preservation and packaging of fruits or vegetables means the AY relevant to the previous year in which the undertaking begins such business.
- The taxpayer has begun such business with effect from June 2001. Therefore, the AY relevant to previous year 1 April 2001 to 31 March 2002 would be the initial AY. The taxpayer would be entitled to 100 per cent deduction only for the first five years including the initial AY, which would last up to AY 2006-07 and thereafter, the taxpayer would be entitled to 25 per cent deduction for the next five years.

The High Court's ruling

- Section 80B(11A) of the Act provides for the benefit for ten consecutive years beginning with the initial AY.

¹ Anand Food and Dairy Products v. ITO [TAX APPEAL No. 174-176 of 2016]

- 'Initial assessment year' has been defined under Section 80B(14)(c)(iv) of the Act to mean, the AY relevant to the previous year in which the undertaking begins such business. Therefore, the taxpayer would be entitled to the deduction under Section 80B(11A) of the Act with effect from initial AY namely, the AY relevant to the year in which it commenced its business, i.e. AY 2002-03.
- However, during the AY 2002-03, the provisions of Section 80B(11A) of the Act did not cover units like the taxpayer and hence, the taxpayer was not entitled to the benefit thereof. The taxpayer came to be entitled to the benefit of deduction under Section 80B(11A) of the Act only with effect from 1 April 2005, when the words 'an undertaking engaged in the business of processing, preservation and packaging of fruits or vegetables' came to be introduced in sub-section (11A).
- Section 80B(11A) of the Act also provides that such deduction shall be hundred per cent of the profits and gains derived from such undertaking for five AYs beginning with the initial AY and thereafter 25 per cent of such profits.
- However, the fact that the units like the taxpayer came to be included for entitlement to the benefit of deduction Section 80B(11A) of the Act only with effect from 1 April 2005, would not change the 'initial AY', which has been clearly defined under Section 80B(14)(c)(iv) of the Act to mean the AY relevant to the year in which the taxpayer commenced its business.
- Thus, an undertaking like the taxpayer would be entitled to the deduction under Section 80B(11A) of the Act from the initial AY, viz. the AY relevant to the previous year in which it begins such business.
- The taxpayer began its business with effect from June 2001 and hence, the initial AY would be AY 2002-03. The taxpayer became entitled to the benefit of deduction under Section 80B(11A) of the Act only with effect from 1 April 2005. For the AYs under consideration, since five years had already elapsed from the initial AY, the taxpayer was entitled to the deduction of only 25 per cent of the profits and gains from its business.
- Consequently, the Tribunal was justified in holding that no artificial definition to the initial AY can be put by considering that the initial AY would be 2005-06. It is by now well-settled that in a taxing statute, the provisions have to be construed strictly, and there is no room for equity therein. Under the circumstances, no infirmity can be found in the view adopted by the Tribunal, which is clearly in consonance with the plain language of the statute.

Our comments

The Supreme Court in the case of Bajaj Tempo Ltd.² held that a provision in the taxing statute granting incentives for promoting growth and development should be construed liberally. Since a provision intended for promoting economic growth has to be interpreted liberally, the restriction on it too has to be construed to advance the objective of the provision and not to frustrate it. However, in the present case, the High Court while dealing with deduction provisions of Section 80B observed that in a taxing statute, the provisions have to be construed strictly, and there is no room for equity therein.

The High Court held that the taxpayer became entitled to the deduction under Section 80B(11A) of the Act only with effect from 1 April 2005, due to the amendment of its provisions. However, the initial AY would be AY 2002-03 since the taxpayer began its business with effect from June 2001. Accordingly, the taxpayer was entitled to the deduction of only 25 per cent of the profits and gains from its business.



² Bajaj Tempo Ltd. v. CIT [1992] 62 Taxman 480 (SC)

www.kpmg.com/in

Ahmedabad

Commerce House V, 9th Floor,
902 & 903, Near Vodafone House,
Corporate Road,
Prahlad Nagar,
Ahmedabad – 380 051
Tel: +91 79 4040 2200
Fax: +91 79 4040 2244

Bengaluru

Maruthi Info-Tech Centre
11-12/1, Inner Ring Road
Koramangala, Bangalore 560 071
Tel: +91 80 3980 6000
Fax: +91 80 3980 6999

Chandigarh

SCO 22-23 (1st Floor)
Sector 8C, Madhya Marg
Chandigarh 160 009
Tel: +91 172 393 5777/781
Fax: +91 172 393 5780

Chennai

No.10, Mahatma Gandhi Road
Nungambakkam
Chennai 600 034
Tel: +91 44 3914 5000
Fax: +91 44 3914 5999

Delhi

Building No.10, 8th Floor
DLF Cyber City, Phase II
Gurgaon, Haryana 122 002
Tel: +91 124 307 4000
Fax: +91 124 254 9101

Hyderabad

8-2-618/2
Reliance Humsafar, 4th Floor
Road No.11, Banjara Hills
Hyderabad 500 034
Tel: +91 40 3046 5000
Fax: +91 40 3046 5299

Kochi

Syama Business Center
3rd Floor, NH By Pass Road,
Vytilla, Kochi – 682019
Tel: +91 484 302 7000
Fax: +91 484 302 7001

Kolkata

Unit No. 603 – 604,
6th Floor, Tower – 1,
Godrej Waterside,
Sector – V, Salt Lake,
Kolkata 700 091
Tel: +91 33 44034000
Fax: +91 33 44034199

Mumbai

Lodha Excelus, Apollo Mills
N. M. Joshi Marg
Mahalaxmi, Mumbai 400 011
Tel: +91 22 3989 6000
Fax: +91 22 3983 6000

Noida

6th Floor, Tower A
Advant Navis Business Park
Plot No. 07, Sector 142
Noida Express Way
Noida 201 305
Tel: +91 0120 386 8000
Fax: +91 0120 386 8999

Pune

703, Godrej Castlemaine
Bund Garden
Pune 411 001
Tel: +91 20 3050 4000
Fax: +91 20 3050 4010

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

© 2016 KPMG, an Indian Registered Partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

The KPMG name and logo are registered trademarks or trademarks of KPMG International.

© 2016 KPMG, an Indian Registered Partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.